

**RULES
OF
TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY**

**CHAPTER 0720-1
CONDUCT OF BUSINESS**

TABLE OF CONTENTS

0720—1—.01	Communications	0720—1—.04	Access to Agency Records
0720—1—.02	Conflicts of Interest	0720—1—.05	Conducting Agency Meetings
0720—1—.03	Requests for Determination	0720—1—.06	Beginning of Review Cycles

0720—1—.01 COMMUNICATIONS

- (1) All documents, information, and written communications which are required to be filed with the Tennessee Health Services and Development Agency (hereinafter the "Agency") must be received at the Agency's business office located in Nashville, Tennessee, during normal business hours.
- (2) The filing date of any document shall be the actual date of receipt in the Agency office. In the event the last appropriate filing date falls on a Saturday, Sunday, or legal holiday, such filing must occur on the business day immediately preceding.
- (3) Such documents, information, and written communications shall not be sent by facsimile transmission. Any such documents, information, and written communications which are received by facsimile transmission will not be considered as having been "filed" with the Agency, except on the express authorization of the Executive Director, for good cause shown.

Authority: T.C.A §§68—11—1605; 68—11—1607; 4—5—202.

0720—1—.02 CONFLICTS OF INTEREST¹

- ~~(1) Members. If any matter before the Agency involves any project, transaction, or relationship in which a member or their associated institution or business has a direct or a conflicting interest, the member shall make known to the Agency that interest and recuse himself/herself from the deliberation and vote, and join the general public during the proceedings~~
- ~~(2) Staff. No employee of the Agency should during his/her term of employment, enter into a relationship with any party involved directly or indirectly in Agency business in such a way that a conflict could arise between the staff member's interests and the duties or policies of the Agency. If such a relationship arises, it is the duty of the staff member to so advise the Executive Director and the Chairperson, and take such action as they prescribe.~~

(1) Definitions

- (a) "Conflict of interest" means any matter before the agency in which the member or employee of the agency has a direct or indirect interest that is in conflict or gives the appearance of conflict with the discharge of the member's or employee's duties;
- (b) "Direct interest" means a pecuniary interest in the persons involved in a matter before the agency. This interest applies to the agency member or employee, the agency member's or employee's relatives or an individual with whom or business as to which the member or

employee has a pecuniary interest. For the purposes of this part, a relative is a spouse, parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece, or nephew by blood, marriage or adoption; and

(c) "Indirect interest" means a personal interest in the persons involved in a matter before the agency that is in conflict or gives the appearance of conflict with the discharge of the agency member's or employee's duties;

(2) All agency members shall annually review and sign a statement acknowledging the statute, rules and policies concerning conflicts of interest.

(3) Any member, upon determining that a matter scheduled for consideration by the agency results in a conflict with a direct interest, shall immediately notify the executive director and shall be recused from any deliberation of the matter, from making any recommendation, from testifying concerning the matter, or from voting on the matter. The member shall join the public during the proceedings.

(a) Any member with an indirect interest shall publicly acknowledge such interest.

(b) All members shall make every reasonable effort to avoid even the appearance of a conflict of interest. If a member is uncertain whether the relationship justifies recusal, the member shall follow the determination by the legal counsel for the agency.

(c) A determination by the agency or any court that a member of the agency with a direct interest failed to provide notice and be recused from deliberations of the matter, from making any recommendation, from testifying concerning the matter, or from voting on the matter, shall result in the member's automatic termination from the agency and the position shall be considered vacant. The member shall not be eligible for appointment to any agency, board or commission of the state for a period of two (2) years.

(d) The executive director, upon determining that a conflict exists for the executive director or any member of the staff, shall notify the chair of the agency and take such action as the chair prescribes and pursuant to this part.

0720—1—.03 STAFF AND AGENCY DETERMINATIONS

- (1) Persons seeking information and/or guidance from the Agency or staff may receive such information and/or guidance by any of three methods: informal staff advice, staff determinations, or official Agency determinations.
- (2) Staff Advice. Staff members may give advice or guidance orally or in writing when requested. Such informal staff advice is merely the personal opinion of the staff member, and does not represent the position of the Agency or any member thereof. Such advice is not binding on the Agency, and creates no precedent
- (3) Staff Determinations. A staff determination may be issued in writing, and signed by the Executive Director or General Counsel. While a staff determination represents the considered position of staff, it does not necessarily represent the position of the Agency. A staff determination is not required to be officially adopted by the Agency, and creates no binding precedent on the Agency.
 - (a) When an inquiry is received which does not specifically request an official Agency determination, the Executive Director will determine whether the inquiry should be handled as a staff determination or as an Agency determination.

- (4) **Agency Determinations.** An Agency determination represents a formal opinion of the Agency. Agency determinations are initially analyzed and drafted by staff, and presented to the full Agency during a regularly scheduled Agency meeting. The Agency may then adopt, reject, or modify staff's recommendation.
- (a) Written requests for Agency determinations should be received by the ~~last first~~ business day of the preceding² month to be included on the Agency's agenda for that month. In the discretion of the Executive Director, the first inclusion of the request for determination on the Agency's agenda may be for the purpose of public notice: the request may then be placed on the agenda for the next succeeding Agency meeting for the Agency's consideration and decision. The Executive Director may waive the provisions of this subsection, and place the request for determination before the Agency for consideration on the first inclusion on the agenda.
- (b) If the issue upon which a request for determination is based has been addressed by the Agency in prior determinations, or if the issue is otherwise not appropriate for a request for determination, staff will notify the person making the request and the request will not be placed on the Agency's agenda.

Authority: T.C.A. §§ 68—11—1605; 68—11—1607; 4—5—202.

0720—1—.04 ACCESS TO AGENCY RECORDS

- (1) **Public Inspection.** All public records of the Agency are available for inspection during normal business hours in accordance with reasonable office policies.
- (2) **Copies.** Persons who wish to obtain copies of records in excess of 15 pages must request such copies in writing. Copies will be furnished at a cost of \$.25 per page up to 200 pages. Copies in excess of 200 pages shall be charged a rate of \$1.00 per page: such \$1.00 per page rate shall apply to all pages requested and copied, not to only the pages exceeding 200 pages.
- (a) In the absence of exceptional circumstances, as approved by the Executive Director, outside copying machines shall not be used.
- (b) In no event shall anyone other than an Agency member or staff member be allowed to take original Agency records outside of the Agency's business office.
- (3) **Audio Tapes.** Recordings of meetings of the Agency are available for review and duplication. For each audio tape to be duplicated, the person requesting the duplication shall pay a fee of fifteen dollars (\$15.00).
- (4) **Monthly Meeting Packet.** Notwithstanding the copy fee schedule established in Subsection (2) of this Rule, persons desiring to receive copies of the Monthly Meeting Packet distributed to Agency Members may subscribe at the annual rate of \$1,500.00. Each Monthly Meeting Packet will include copies of the meeting Agenda, Certificate of Need application summaries, related reports of the Departments of Health and Mental Health and Developmental Disabilities, and reports and correspondence pertaining to agenda items as required.

Authority: T.C.A. §§ 68—11—1605; 4—5—202 and 10—7—506.

0720—1—.05 CONDUCTING AGENCY MEETINGS

- (1) The Agency will hold regularly scheduled, public meetings to consider applications for certificates of need, and to conduct other business.

- (2) Meetings of the Agency will be under the direction of the Chair, or in the Chair's absence or at his/her request, the Vice-Chair or other designated member as determined by the Chair.³ The meetings will be conducted in accordance with Robert's Rules of Order, except where such is in conflict with Tennessee law or the Agency's Rules~~accepted rules of parliamentary procedure, as determined by the Chair or acting Chair.~~⁴
- (3) All motions for the approval or disapproval of certificates of need and for Agency Determinations will be determined by roll call vote. Except where otherwise provided by rule or by statute, matters other than the approval or disapproval of a certificate of need and Agency Determinations may, at the discretion of the Chair or acting Chair, be determined by voice vote.
 - (a) Any Agency member present and voting on a matter which has been determined by a voice vote may request that a roll call vote be taken. In the event such a request is made, a roll call vote will be taken. No additional debate or discussion will be allowed on the matter, unless otherwise appropriate under applicable rules of parliamentary procedure.
 - (b) Conditions placed upon the granting of a certificate of need should be included in the motion for approval, or an amendment thereto, and determined in accordance with these rules.^{5 6}

Authority: T.C.A. §§ 68—11—1605; 68—11—1607; 4—5—202.

0720—1—.06 BEGINNING OF REVIEW CYCLES

Review cycles shall begin on the first day of the following months: January, February, March, April, May, June, July, August, September, October, November, and December.

Authority: T.C.A. §§ 68—11—1605; 68—11—1607; 4—5—202.

¹ The Tennessee Health Services and Planning Act of 2002 [hereinafter referred to as the "new" statute] contains comprehensive provisions re. *conflict of interest*, which prompted Agency Staff to propose the deletion of the section in the Agency's Rules. Mr. Koella proposed the restatement of the statutory provisions in the Agency's Rules.

² Agency Staff proposed the amendment to be consistent with other Agency rules.

³ Agency Staff proposed the change to clearly delineate at whose discretion the designation shall be made.

⁴ Robert's Rules of Order is the accepted standard, so Dr. Shackelford proposed that it be specified as such in the Agency's Rules.

⁵ Commissioner Flowers proposed the amendment to clarify the need to include conditions placed on certificates of need in the motion to approve.

⁶ Agency Staff had suggested the addition of the following language, but has withdrawn the suggestion:

- (4) When granting an application for the establishment, modification, or expansion of an ambulatory surgical treatment center, or the particular services offered by an ambulatory surgical treatment center, the certificate of need shall be limited to the services and number of operating and procedure rooms specified in the application considered by the Agency, unless the Agency expressly grants the certificate of need or modification thereto otherwise.

The following comments were received from interested parties with respect to the withdrawn proposal:

Jerry W. Taylor, Esq. of Farris Mathew Branan Bobango & Hellen:

The proposed amendment to this Rule, identified as new subsection (4) in the latest draft, is well taken, in that if an application is approved it should be limited to those services, number of rooms, etc. specified in the application. I would add the following caveat/questions to the proposal:

- (1) By providing that the CON is limited to the "services" specified in the application, would that require applicants to specifically enumerate every specific type of surgical procedure to be performed, or is

the intent to limit the approval to “categories” of services, e.g., “orthopedic,” “ophthalmic,” “general surgery,” etc.? Perhaps the wording could be changed to “the certificate of need shall be limited to the category of services and numbers of operating and procedure rooms...”

Mr. John Wellborn of Development Support Group:

It is difficult to regulate operating room capacity in the State when existing hospitals and surgery centers can expand at will. But this rule closes that loophole only for one type of surgical facility--and not the one which creates most of the State's O.R. capacity.

Consideration should be given to expanding this proposed rule to include all applications affecting operating room complements in any type of facility. A new or replacement hospital or its surgery department expansion, and a new or replacement surgery center and its surgery department expansion, all seem to deserve equal treatment if regulation of excess operating room capacity is to be effective. We are not aware of a reason why the CON program should treat hospitals and surgery centers differently.

Mr. Noel Falls of Falls Marketing Group, Inc.:

Does this language require that all services be declared at filing? For example, if one were to file a CON for a multi-specialty ASTC that, during this initial stage of development, had orthopedics, gynecology, plastics, and neurology lined up but, after opening they wanted to add pain management or ophthalmology. Would this rule change require them to come back and obtain an additional CON? Would it help by adding “range of” preceding each mention of “services”?